



Testimony of

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Subcommittee on Economic Security, Infrastructure Protection and Cybersecurity
of the
House Committee on Homeland Security

“HR 5695 The Chemical Facility Anti-Terrorism Act of 2006”

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Testimony

Mr. Chairman, I am Marty Durbin, Managing Director of Federal Legislative Affairs with the American Chemistry Council (“ACC”). The American Chemistry Council represents the leading companies engaged in the business of chemistry. We thank you for calling today’s hearing on a subject of great importance both to the chemistry sector I represent and the nation at large.

In addition I want to thank you for your leadership in introducing the Chemical Facility Anti-Terrorism Act of 2006, along with the efforts for Ranking Subcommittee Member Loretta Sanchez, Committee Chairman Peter King and Ranking Member Bennie G. Thompson and other co-sponsors.

When it comes to chemical facilities and their communities, Congress – like law enforcement officers and emergency responders – has an obligation to “serve and protect” this crucial part of the nation’s critical infrastructure. Today, nearly five full years after 9/11, this bill has the potential to achieve this goal.

Today, I would like to address several points:

The chemistry sector and the products we produce are essential for the physical, economic and competitive well-being of our nation.

- ACC member companies – without waiting for federal legislation have already made an unprecedented commitment to security and implemented the nation’s most widely-recognized industry security program: the Responsible Care[®] Security Code.
- Despite such efforts by our members, the chemistry sector needs broader protection, which can only be provided by the federal government.
- The legislation that promotes our sector’s security must meet key criteria.

Finally, I would like to offer our initial views on your new chemical security bill.

Chemistry – Essential₂ America

Products supplied by the chemistry sector are essential to manufacturing, agriculture, energy, transportation, technology, communications, health, education, defense, and virtually every aspect of our lives. Basic industrial chemicals are the raw materials for thousands of other products including plastics, water treatment chemicals, detergents, pharmaceuticals and agricultural chemicals. Their applications include medicines and medical technologies that save our lives, computers that expand our horizons, foods we eat, water we drink, cars we drive, homes in which we live, and clothes we wear.

Our \$550 billion dollar industry employs almost 900,000 people across the country, and accounts for 10 percent of all US merchandise exports. In fact, more than 96% of all manufactured goods are directly touched by chemistry.

Chemicals are essential for the life of the nation. Last year, we invested \$14.3 billion in environmental health and safety programs. We generate nearly 1 out of every eight U.S. patents and invest more than \$22 billion in R&D annually, more than any other industry.

The Chemistry Sector and ACC's Responsible Care[®] Security Code

Since 9/11, there has been a paradigm shift in the way we approach chemical facility security. Security has always been a top priority for America's leading chemical producers, and soon after the terrorist attacks of September 11, 2001, members of the American Chemistry Council took the lead in securing their facilities. Without waiting for government direction, the ACC Board of Directors quickly adopted the Responsible Care Security Code, an aggressive plan to further enhance security of our facilities, our communities and our products.

In my testimony before this committee last year, I spoke in some detail about ACC's Responsible Care Security Code. In summary, the Responsible Care Security Code is a mandatory program for all of our members. The Code requires each company to complete a four-step process:

- Prioritize every facility by risk;
- Assess vulnerabilities
- Implement security enhancements; and
- Verify the implementation of physical security measures, using third parties that are credible with the local community, such as first responders or law enforcement officials.

Since implementing the Code, I'm glad to report that our member companies have invested nearly \$3 billion in security enhancements. Additional statistics are available online at www.ResponsibleCare-US.com.

The Code has been widely praised and accepted. Under the Maritime Transportation Security Act, the US Coast Guard has approved the Code as an alternative form of MTSA compliance. And the Code has earned praise from government officials and security experts.

In addition, ACC stepped up our outreach to and cooperation with the public sector in Washington and at the local and state levels, developing new ways to share information and work together. We helped create the Chemical Sector Coordinating Council, which facilitates effective coordination between DHS and chemistry businesses to protect this critical sector of the nation's infrastructure. This partnership proved very valuable to the nation during last year's Gulf hurricanes. It should also serve as a constructive basis on which to build a regulatory program.

The benefits of this partnership continue. For example, over the last three years, ACC has co-hosted an annual Chemical Security Summit at which DHS and other government officials from Washington, the states and localities have shared best practice information with industry experts. This year's summit is underway right now in Baltimore, an example of how we can – and must – work together.

Why America Needs A National Chemical Security Law

As I have stated in prior testimony, the chemical industry is part of the nation's critical infrastructure, an essential asset that needs to be protected. Because of our role in the nation's economy, defense and health, for instance, the chemical sector must be adequately protected.

ACC members account for nearly 85 percent of the nation's chemical production, but we do not encompass the entire sector. In fact, most facilities within the sector do not produce chemicals, but rather use or store them. Though ACC's members have undertaken significant security enhancements under the Responsible Care Security Code, there are many nonmember facilities that neither ascribe to the Code nor are covered by federal or other security regulations. To protect them and the entire chemical sector, a uniform federal law is needed to set and enforce standards.

National Chemical Security Legislation and the Crucial Public-Private Partnership

Speaking in Washington in March, DHS Secretary Michael Chertoff outlined how government and the private sector must work together to promote chemical security. Rather than dictate how security is to be achieved, the federal role should take advantage of the “strength of the industry – its adaptability, its initiative and its ingenuity – by laying out a series of performance standards,” Secretary Chertoff said.

Government should set and enforce clear performance standards across the entire chemical sector. Companies must meet those standards, and their compliance should be independently verified. The result will be enhanced security.

ACC has consistently argued that national chemical security legislation must:

- **Create risk-based/performance orientated standards with DHS oversight**
 - *Risk-based* -- The only sensible way to address the risks posed by terrorist attacks on our homeland is to adopt a risk-based system of prevention and preparedness. Different chemical facilities pose different risks, based on their differing vulnerabilities and consequences, and any regulatory system must reflect those differences and require security measures commensurate with those risks.
 - *Performance-oriented* -- Facilities need flexibility to select among appropriate security measures that will effectively address risks. Under Secretary Stephan noted that an overly prescriptive system could, by its predictability, actually assist terrorists in targeting their attacks.
 - And, DHS must have the legal authority to police compliance with its standards and to take enforcement action if necessary.
- **Establish uniform national standards for the entire industry.** Only through the establishment of a set of **uniform standards** will we be able to protect the entire chemical sector. Chemical security, like nuclear or aviation security, is a national concern. Congress

should support federal preemption and prohibit a patchwork of inconsistent state requirements that may actually hamper security by misdirecting resources.

- **Protect sensitive information.** Information about the vulnerabilities of facilities, and the measures they have taken to reduce them, is literally a roadmap for terrorists. A law that required such information to be created, but then permitted it to be released publicly, would be a step in the wrong direction to improve security.
- **Avoid redundancy and inconsistency.** Legislation should recognize and be consistent with the highly successful efforts of the Maritime Transportation Security Act (MTSA) passed three years ago. Facilities already secured under MTSA should not be subject to a separate layer of security regulation and inevitably conflicting direction from two different regulatory overseers.
- **Recognize responsible voluntary efforts.** Based upon their substantial and verifiable efforts to date, ACC members strongly believe that federal legislation should enable DHS to give them credit for their substantial voluntary, at-risk expenditures implementing the Responsible Care[®] Security Code. We are not asking for anything less stringent than everybody else, only that DHS be allowed to recognize our members' significant actions, just as the Coast Guard has done.

There has been a great deal of discussion surrounding inherently safer technology (IST) in regards to chemical security. The business of chemistry has long embraced inherently safer approaches.

Last week the Senate Environment and Public Works Committee held a hearing regarding IST. During that hearing, leading experts who literally wrote the book on utilizing IST at chemical facilities warned Congress against mandating IST.

Their testimony supports what I stated a few moments ago, we believe chemical security legislation should be performance oriented allowing facilities the flexibility to choose from an array of security measures. Legislation should not mandate specific security measures.

ACC Views on The Chemical Facility Anti-Terrorism Act of 2006

Given the bill's introduction only yesterday, we have only been able to read it quickly and will, naturally, need time to carefully consider its provisions and discuss them with our membership. I am pleased to say, though, that the Committee's action in introducing the bill, and convening this hearing, are extremely positive steps that take us a long way toward the goal of a comprehensive, risk-based, performance-oriented, national chemical security program, and we commend you

The bill seems solidly focused on promoting the security of the chemical infrastructure. The bill appears to allow chemical facilities the flexibility to select appropriate measures to achieve a clearly defined standard. There is also a very helpful statement that prevents vulnerability assessments or plans from being rejected for not including a specific security measure .

The bill provides an appropriate mechanism for recognizing the massive investments that our members have made under the Responsible Care Security Code. It also adopts a very workable and

sensible approach for dealing with MTSA facilities, avoiding duplicative regulation but allowing the Secretary to require additional security measures if needed, we presume, to meet applicable performance standards.

The bill generally provides very solid information protections, clearly providing that sensitive security documents and information cannot be released. We note, however, that the bill does appear to contain any penalties even for government employees who knowingly violate protocols for protecting information. Such penalties have been a hallmark of other chemical security bills over the years and are needed to give the protections teeth.

We also believe the bill could go further to address the important question of federal preemption. We think a much clearer and more appropriate standard would be the one established by Congress in the Hazardous Materials Transportation Act – where state requirements are preempted unless they are “substantively the same as” the federal program.

Again, I expect that we will have further thoughts on this bill as we are able to review it more carefully. But overall, we commend you and your colleagues for crafting a good bill that can be the vehicle that gets us all to a Rose Garden ceremony this year.

Looking Ahead

ACC is fully committed to winning passage of an effective chemical security bill this year. Our member companies have worked hard to obtain this goal, and we promise to continue working closely with this subcommittee, the full committee, the Congress and the administration to make this a reality.

As our CEO, Jack N. Gerard said recently, “The 900,000 people who work in the chemical industry, the communities where they live and work, and the millions of Americans who rely on our products, deserve no less.”

Thank you and I will be pleased to answer questions.

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